

Frequently Asked Questions Regarding Allen County's Domestic Relations ADR Project

Question: What has been going on in Allen County, that domestic relations mediation has been so successful there?

Answer: In recent years, the Judges and Magistrates of the Allen Circuit Court and Allen Superior Court have worked closely with the members of the ADR and the Domestic Relations sections of the Allen County Bar Association to forge a legal culture wherein mediation has become the preferred and expected manner in which parties attempt to resolve their domestic relations disputes. To create this culture, the Courts initially provided significant funding in training local attorneys and social service professionals to become mediators, who in turn were required to provide hours of domestic relations mediation pro bono. The Courts also co-sponsored multiple ADR training programs attended by many attorneys and other professionals who paid their own program fees and costs in order to learn to incorporate ADR into their domestic relations practices.

Since February, 2000, the Allen Circuit Court and Allen Superior Court, with the support of the Allen County Bar Association have conducted free mediation for referred cases. A free “Mediation Day” is held each quarter at Allen Co. Courthouse for domestic relations cases presently set for trials in both courts. These cases involve issues such as divorce, child custody, child visitation, & child support, and are mediated by certified mediators. This program is at no cost to the parties. The goal of “Mediation Day” is to provide the Allen County public, who are involved in domestic relations litigation with an opportunity to resolve their cases by agreement, in a quick and economical manner.

Financial support for this ADR project was initially provided in 1998 by a pilot project approved via legislation assessing a \$20.00 per case filing fee for all new Allen County divorce cases, and by quasi-pro bono support of the bar.

The Allen County family Courts firmly support the concept of mediation for domestic relations cases as a way for the families involved in the cases to actively participate in, and shape the Court orders that impact their families. The Courts created local policies and procedures to encourage mediation in domestic relations cases, such as generally requiring mediation in all domestic relations cases where the issues were to be set for trial of more than two (2) hours in length. Mediation makes a lot of sense in these cases where people have to maintain a relationship for the lives of the children. The Allen County experience has been that of those cases so mediated, well over half of been successful, and that the culture is changing in the litigants as well, encouraging them to expect to be able to resolve their family differences without trial.

Question: Who are the mediators in the Domestic Relations ADR project? Are they paid local attorneys, assigned on a rotating basis? At what rate are they paid, or are they pro bono attorneys?

Answer: We typically conduct a free "Mediation Day" program on a quarterly basis, provided as a service to domestic relations litigants who might not otherwise be able to afford mediation. Mediators who wish to be assigned cases in the project volunteer to mediate at the quasi pro-bono rate of \$100 per hour of mediation. Most mediation sessions in the program are one (1) hour or two (2) hours in length. We find that the majority of modest means and pro se matters are successfully mediated in such relatively short sessions. We have a mediator-member of the local domestic relations bar coordinate recruiting and assigning mediators to the cases that are ordered in to the Mediation Day program. This coordinator is paid a quasi pro bono fee of \$400 per quarter for the effort. The coordinator recruits the mediators from the list of local, accredited family law mediators, which includes both attorneys and non- attorneys alike.

We also may appoint a mediator to mediate a case outside of the "Mediation Day" program if the parties cannot afford to pay a mediator, but the case is too complicated for Mediation Day, or if it may not be best to wait for the next quarterly Mediation Day program. These attorneys are assigned from our rotating list and are asked to accept the appointment at the quasi pro bono rate of \$100 per hour. In such instances, the Court assigns the mediator in its Order For Mediation.

Question: What considerations are afforded pro se litigants, since the parties will not have anyone to review the mediated agreement and may not know how to submit the written agreement to the Court or follow through to submit the report? Will the mediator write the agreement for the parties in legal form for submission to the Court?

Answer: During Mediation Day, when a matter is successfully mediated, the agreement is immediately reduced to a writing by the mediator, who then obtains the signatures of the parties (and where appropriate, counsel) that same day. If a pro se participant wishes to have someone later review the agreement, this is possible, but not encouraged. The mediators attempt to obtain full resolution of all matters at the mediation, and then have the parties approve the agreements in writing at the conclusion of the mediation, so as to avoid the problems associated with what is sometimes referred to as "settler's remorse." The mediator submits the agreement to the Court for approval, with a proposed form of order. We usually also have a judicial officer (although sometimes it is the Mediation Day coordinator serving as a Judge Pro Tem) on hand to immediately accept and approve any agreements that (in the eyes of the mediator) would benefit from such efficient justice. If this process is not done on the day of the mediation, it is typically accomplished shortly thereafter.

The same essentially applies for cases outside of the Mediation Day program, and the mediator supplies the Court with the agreement and appropriate form of order. When mediation is sadly not successful, the mediator files a notice of such with the Court.

Question: Who provides intake or coordination between the Court, the parties, and the mediators? Who contacts the mediator, gives notice to the parties, and follows up to ensure mediation occurs, or reports back to the Court (this may only be an issue for pro se parties)?

Answer: See above. Most cases include an “Order For Mediation.” (See attached Order.) Many cases result from pro se (or when at least one party is pro se) matters that come before the Court, where the Court identifies the need for mediation at the hearing. In such cases, the Court issues an Order For Mediation. The parties may also request permission to participate in the program, or they may be referred by counsel. When the media advertises Mediation Day, we usually receive self-referrals. We typically want the Order For Mediation entered in all cases.

Whether Court-referred, self-referred, or counsel-referred, the referring person schedules the mediation on the Mediation Day calendar. One Court Reporter maintains the Mediation Day calendar for both Superior and Circuit Courts, as this is a co-sponsored program. The Mediation Day coordinator communicates with that Court Reporter to learn of the calendar and of the need for mediators.

We typically conduct Mediation Day quarterly on days when we judicial officers are attending Indiana Judicial Center educational events. This permits Mediation Day to be held in the Allen County Courthouse at a time when space is actually available, as there would be no space in the Courthouse if we were all here, otherwise engaged in the business of adjudication, working our respective calendars. This also permits the business of the Court (i.e., dispute resolution) to go forward in the absence of most Allen County judicial officers. We observe this to be quite an efficient use of our limited judicial resources.